

## **N.D.A.G. Letter to Vogel (Dec. 28, 1989)**

December 28, 1989

Honorable Sarah M. Vogel  
Commissioner of Agriculture  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Commissioner Vogel:

Thank you for your September 15, 1989, letter requesting an opinion concerning N.D.C.C. § 34-06-09. I apologize for the delay in responding to your request.

You ask whether it is lawful to extend a minimum wage order's overtime provision to farm laborers if farmers and farm laborers were not participants in the wage conference that preceded issuance of the minimum wage order.

The Legislature has delegated to the Commissioner of Labor the authority to prescribe minimum wage standards for "employees in any occupation in this state." N.D.C.C. § 34-06-03(3). The Commissioner of Labor may prescribe those standards in the manner set forth in N.D.C.C. ch. 34-06.

N.D.C.C. ch. 34-06 requires the Commissioner of Labor to convene a conference to make findings and recommendations on the subject of standards of minimum wages and hours for employees, which findings and recommendations may be adopted by the Commissioner of Labor as a wage order. N.D.C.C. § 34-06-09 to -11. "The conference must be composed of not more than three representatives of the employers in said occupation, of an equal number of the representatives of the employees in said occupation, of not more than three disinterested persons representing the public, and of the commissioner or his representative." N.D.C.C. § 34-06-09. The conference is to make a report to the Commissioner of Labor containing recommendations on the particular questions "concerning the particular occupation under inquiry." N.D.C.C. § 34-06-10. After the Commissioner of Labor has approved the recommendations of a conference and has adopted a wage order, "all employers in the occupation affected thereby" are required to follow the wage order. N.D.C.C. § 34-06-12.

For the purposes of N.D.C.C. ch. 34-06, "occupation" is defined as "a business or industry, or a trade or branch thereof." N.D.C.C. § 34-06-01(5). "Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears." N.D.C.C. § 1-02-02. In its ordinary sense, the word "industry" means "[a] specific branch of manufacture and trade." American Heritage Dictionary 657 (2d college ed. 1982). The word "trade" is understood in its ordinary sense to mean "[a]n occupation, esp[ecially] one requiring skilled labor; craft . . . . The persons working in or associated

with a specified business or industry." Id. at 1284. Thus, with respect to wage orders, the Commissioner of Labor may recognize an occupation based on the general nature of the employer's business or on the specific tasks performed by the employee.

It is my opinion that "farm laborer" is an occupation within the meaning of N.D.C.C. ch. 34-06. Because farm laborer is an occupation within the meaning of N.D.C.C. ch. 34-06, the Commissioner of Labor has the authority to prescribe minimum wage and hour standards for employees in that occupation, provided he does so in the manner prescribed in the~ chapter. Because an occupation may be established according to the types of tasks performed by the employee, however, this does not mean that a person employed by a farmer will always be a farm laborer. Under some circumstances a farmer's employee may be a member of another occupation.

Under N.D.C.C. ch. 34-06 both employees and employer must participate in the conference if the minimum wage and hour standard is to be binding upon employers in a particular occupation. It is my opinion, therefore, that the Commissioner of Labor must hold a wage conference composed of representatives of farmers and farm laborers to extend the overtime provisions of a minimum wage order to the occupation consisting of farm laborers not otherwise in another distinct occupation covered by another wage order.

I hope I have adequately answered your question.

Sincerely,

Nicholas J. Spaeth

pg